

FACT-FINDING PROCEEDINGS PURSUANT TO CALIFORNIA GOVERNMENT

CODE SECTION 3505.5

In the Matter of a Dispute
between
Yuba City
and
Public Employees Union, Local #1

Collective Bargaining Impasse

Fact-finding

PERB Case NO. SA-IM-147-M

Arbitrator's Case # 14-A-258

Report and Recommendations of
the Fact-finding Panel

March 10, 2015

Fact Finding Panel:

John F. Wormuth Neutral Chair/Arbitrator

Natalie Walter For the Employer

Robert Clarke For the Exclusive Representative

Hearing : February 10th & 12th, 2015

Appearances:

For Yuba City:

For Public Employees Union, Local #1

Stacy N. Sheston, Esq.
Best, Best & Krieger, LLP
500 Capitol Mall, Site 1700
Sacramento, CA. 95814

Gary Stucky, Executive Director
718 Bridge Street, A
Yuba City, CA. 95991

BACKGROUND

Faced with the economic crisis stemming from the "Great Recession", Yuba City developed a budgetary stratum covering the years 2008 through 2018. The purpose and intent of the City's financial stratum were to create and adopt current budgets that would accommodate the City's long term plan to balance its budget, perform its essential functions, minimize the impact on bargaining unit members' wages, save jobs, meet its financial obligations, pay down its debts and avoid new debts. An essential element of the City's plan was to avoid increasing its permanent long-term financial obligations for employee compensations.

The City and the Yuba City Employee's Association agreed to amend and extend their Memorandum of Understanding until June 13, 2014. Various amendments established a furlough program that initially reduced the compensable hours of employees by five (5) percent but was expanded to ten (10) percent of compensable hours, which is the current status quo. One of the primary objectives of the furlough program was to reduce the necessity for layoffs and provide economic relief to the City. The City and the Association reached an agreement that created a second tier retirement formula for new employees, effective June 30, 2012. In September of 2012, the Yuba City Employee's Association affiliated with the Public Employees' Union, Local #1.

There were additional cost savings undertaken by the City. Savings were achieved by consolidating positions and not filling select vacancies caused by attrition and some out-sourcing of services. Additional cost savings were realized by the reduction of the bargaining unit positions from approximately 132 to its current size of 90 positions.

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2 The parties had negotiated fixed wage increases based on the California
3 CPI, All Urban Consumers, for the relevant year ending April, 2008. (MOU July
4 1, 2006 through June 30, 2011) The last wage increase generated by this
5 formula was in July, 2008, and future increases were waived for the duration of
6 the MOU. The CPI formula had a floor of two (2) percent and a ceiling of six (6)
7 percent for each year covered by the MOU. In addition, the MOU provided for
8 certain equity adjustments based on the methodology and benchmark
9 classifications utilized in the 2006 compensation survey. There were certain
10 classes in the wastewater division that received salary increases because of
11 recruitment and licensing issues. Essentially, the City, during the furlough period,
12 was required to increase compensation for wastewater operators in order to
13 retain and employ them.

14

15 **RECOMMENDATIONS**

16 There is a general recognition by the parties that the furlough generated a ten
17 (10) percent reduction in bargaining unit compensation. However, there is no
18 agreement on the restoration of the compensation to the salary schedule. Both
19 the City and Local #1 indicate that the furlough program has served its useful
20 purpose. It is recommended that the furlough program be eliminated as soon as
21 possible.

22 The evidence submitted at hearing shows that each one (1) percent of salary
23 has a cost of \$75,000.00 dollars, inclusive of all mandatory costs. The City has
24 established numerous reserve accounts, some of which are dedicated to a
25 specific public purpose.

1 One of those accounts is the Economic Stabilization Fund, which has a
2 balance of 7.3 million dollars, of which 4.5 million dollars is committed, leaving a
3 balance of 2.8 million dollars. Various reserve accounts have shown a pattern of
4 the underestimation of expenses which have resulted in remaining balances in
5 some of those accounts.

6 The City's tax base has not returned to its pre-recession levels. However, the
7 tax base has shown some improvement and appears to be slowly recovering as
8 the local economy improves. The City's operating expenses have not kept pace
9 with its tax base and revenue sources; but with prudent budgeting, the City is
10 able to fund its operations and has made essential capital expenditures.

11 The core of the economic dispute rests with the allocation of the revenue
12 generated by the elimination of the furlough program. The parties developed no
13 specific contract language to restore the deferred salary amounts to the salary
14 schedule. The City proposes bargaining unit members be required to pay their
15 PERS costs out of the ten (10) percent wage reduction. It is estimated if the unit
16 members were to pay their PERS contribution, it would require eight (8) percent
17 of the ten (10) percent of available furlough funds to fund the employee
18 contribution.

19 Local #1 has not opposed the concept that the bargaining unit members pay
20 the employee share of PERS but has sought a salary increase to offset the
21 projected eight (8) percent cost. It is important to note, there is no statutory
22 requirement for employees to assume the cost, but it is a subject of bargaining.

23 The employee PERS costs are currently assumed by the City. The City has
24 produced no persuasive evidence that its proposal is derived from economic
25 necessity. The evidence shows that if the furlough program was eliminated

1 without the employees assuming any PERS contribution, it is well within the
2 City's financial ability to continue to pay them.

3 From the inception of the furlough program, and to date, the bargaining unit
4 has been reduced by approximately 42 positions. This represents a significant
5 reduction in operating costs.

6 It is a well-established principle that new proposals subject to collective
7 bargaining should be resolved through that process. It was in the midst of
8 substantial, adverse economic conditions that the parties successfully negotiated
9 a second tier retirement formula. There is a mutual recognition to address the
10 issue of employee contribution to PERS. The City's PERS proposal should be
11 separated from the furlough program in order to facilitate a mutually acceptable
12 agreement. They are in essence two distinct issues. The circumstances that
13 caused the furlough were beyond the control of the parties, as contrasted with
14 the employee PERS contribution. The City's financial position accommodates
15 this approach since the City is currently paying the employees' PERS.

16 Addressing the PERS contribution on its own merits would allow for the
17 consideration of the long- term implications and the substantial impact on unit
18 members' net take-home pay. There may be potential negative and adverse
19 consequences on the City's ability to recruit and retain a skilled work force.
20 The parties have successfully resolved difficult retirement issues in past
21 bargaining.

22

23 It is recommended that no later than July 1, 2015, the furlough program be
24 abolished and the salary schedules be increased by the furloughed amount. The
25 term of the agreement would be from July1, 2015, through June 30, 2016. The

1 economic provisions of the agreement are to reopen in 2016, in accordance with
2 the provisions of the MOU.

3 The City raises the issues of increased costs in the Workers Compensation
4 Program and the effect of PERS changing the mortality table to reflect increased
5 longevity. It would be to the benefit of the City to determine if moving to another
6 Workers Compensation carrier would provide reduced rates. It is speculative
7 that the City's financial future would be negatively affected by the PERS revision
8 of the mortality tables.

9 This recommendation includes all tentative agreements. Any issues not
10 addressed are to remain status quo.

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John F. Wormuth, Neutral Chair Arbitrator

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Robert Clarke: Local #1 Appointed Panel Member

Concur: ☒ Yes ☐ No

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Natalie Walter: City Appointed Panel Member

Concur: ☐ Yes ☒ No

Dissent of Panel Member Natalie Walter

As a member of the factfinding panel for the hearing involving the City of Yuba City ("City") and the miscellaneous employee unit represented by Local#1, I dissent to the panel chair's written recommendation ("Recommendation").

As an initial matter, I was troubled by the lack of dialog among the panel members as to what our recommendation should or would be. The draft opinion I received from the chair set forth recommendations, although no such dialog among panel members had yet occurred. Further, the panel agreed to hold an in-person meeting in Sacramento a few days later, and my understanding was that the purpose of the meeting was to discuss the draft. However, the meeting lasted only 30 minutes, there was no dialog as to why the recommendations should be otherwise. I was simply informed that I could note my disagreements. That is the purpose of this dissent.

The miscellaneous employee unit ("Unit") includes clerical and administrative employees at City Hall and in other city facilities, maintenance and street crew employees in public works, and plant workers and operators at the water and wastewater treatment facilities. The Recommendation fails to acknowledge the commitments of these Unit employees and the City to working together during the economic downturn of the past five years to avoid or minimize layoffs. The City agreed to deficit-spend and to cut operational budgets to the bone to maintain jobs, and Unit employees made difficult sacrifices including most notably the 10% furlough. The furlough brought with it a valuable benefit to all of us employees – time off that we could spend with our families – but came with a corresponding reduction in our take-home pay, which was a difficult sacrifice for us. Despite these sorts of sacrifices, employees in this Unit have continued to provide tremendous customer service and are deeply committed to our community. The situation has improved, but as was explained through negotiations and at the hearing, the City's deficit position persists and will until at least 2018. That reality cannot be ignored without irresponsibly jeopardizing the City's long-term financial stability, which would be detrimental to this Unit and to all the City's employees.

Background

I first note an error in the background section with respect to the size of the Local #1 unit. Contrary to the statement in the Recommendation, positions in this unit have not been reduced from 132 to 90 positions. I do not understand the source of these figures. Local #1 unit positions have not changed significantly since 2008. While vacancies fluctuate and impact the number of dues paying employees, as of February 2015 there are 106 budgeted positions in this unit (compared to 119.1 in February 2008).

I also note that although previously negotiated wage increases (from the MOU beginning in July 2006) were subsequently bargained away in exchange for layoff protections and furloughs, many positions in this Unit have received wage increases. Over the past 5 ½ years, the City has implemented multiple classification adjustments resulting in pay increases for employees and has negotiated increases in water certificate pay and standby pay. The water certificate pay and

standby pay alone affected some 34 employees in the Unit. Additionally, eight employees received a 10% wage increase due to recruitment and retention issues.

Dissent to Recommendation

While I agree with the elimination of the furlough, I dissent to the panel chair's Recommendation, which disregards the City's financial reality as clearly presented in detail by the Finance Director at the hearing. Specifically, these critical facts seem to have been completely ignored:

- Making no changes at all, the City is already in a deficit spending situation and will continue to be in a deficit situation until 2018 when its outstanding pension obligation bonds have been fully repaid;
- While the City's main revenue streams (primarily property tax and sales tax) have made modest recoveries in the last few years, total general fund revenues are nowhere near pre-downturn levels. The current deficit situation, as well as deficits projected for the coming several years, already include the recovering revenues and assume (without any guarantees) that additional gains will be made between now and 2018;
- The one-time savings that have been achieved in the past few years have resulted from not backfilling vacant positions, which has had a dramatic corresponding impact on the services the City provides to the community as well as on the morale of those still employed. Major recruiting efforts to fill vacancies are already underway, but filling positions will generate additional costs in an already-deficit-spending budget, and that's where the previous savings will be applied. Moving forward those savings will be eroded to a deficit as positions are filled, and the City will have no revenue stream to maintain those positions barring unexpected new revenues or adjustments elsewhere in the budget;
- The City has various funds that are designated for spending on legally restricted programs (such as road funds) and others of which are committed to other City capital expenditures (such as vehicle replacement and building repair and replacement). The City has been deferring every capital expense that it could for the last several years, but that can only occur for so long before those proverbial chickens come home to roost. Some of those types of expenditures must be made in this and coming years in order for necessary services to be provided safely;
- The City's "reserve" is used as the City's bank account to cover expenses that occur during the course of a fiscal year before anticipated revenues come in (the bulk of which occurs in February each year). It's a cash flow issue not conceptually different from the one we all face at home: we only get paid at certain times, and we have to plan ahead to have funds available for expenses that will occur before the next pay cycle. For the City, the single biggest expense in this on-going cycle is employee payroll and benefit costs from July 1 (the beginning of the fiscal year) until February (when the bulk of the City's property tax revenues are received). Without maintaining these "reserves" the City would be left unable to meet its regular payroll by approximately late September or early

October. The Economic Stabilization Fund (ESR) is going to fill the operating deficit until 2018;

- Costs associated with the City's workforce have and continue to escalate at historically unprecedented rates, most notably health care premiums, CalPERS retirement costs, and workers compensation program¹ costs. Yet the Recommendation inexplicably dismisses this concern. As an example, in an almost throw-away comment at the end, the Recommendation claims it is "speculative" that the City's financial future would be negatively affected by the CalPERS revision of the mortality tables. There is nothing speculative about it, and the concept is a simple one: retirees are living longer, and thus drawing benefits longer, and that costs more. To address that, CalPERS has already adjusted the rates agencies must pay. Once CalPERS makes a decision and adjusts the rates charged to agencies like the City, there is nothing speculative about the impact on and cost to the City.

The City agrees that the furlough program should be eliminated, both for the benefit of the employees and for the benefit of services provided to the community. That has been the City's position through the negotiations in 2014, through two days of unfruitful mediation in November 2014, and again at the Factfinding hearing in February 2015. However, elimination of the furloughs comes at a cost on top of all the factors described above. The City's goal has been to work with Local #1 to achieve a method for doing so that does not further undermine the City's already-challenged financial health and that is palatable for the Unit employees. The Recommendation to simply eliminate the furlough without any related adjustment to account for the increased cost is financially irresponsible and contrary to the fundamental principle of achieving a sustainable financial position into the future.

Conclusion

The City absolutely recognizes the tremendous value of its workforce. Do City employees provide excellent service to this community? Without question. Do City employees deserve raises, given the general wage stagnation of the downturn years? Of course they do. But the prudent management of the City's delicate financial situation simply does not allow it right now without making job cuts the City is unwilling to make. Throughout these negotiations, the City has been transparent about the financial realities. The City took the same position with Local #1 that it did with those other groups as to the elimination of furloughs in conjunction with other structural adjustments to address the related costs. Even the City's position (with others and with Local #1) came with increases in costs. The City has made critical strides in the right direction

¹ The Recommendation oddly suggests that the City should change carriers to reduce its workers compensation costs. Other than a notation of the escalating costs of workers compensation benefits, there was no information presented to, or requested by, the panel regarding the City's workers compensation program, so it is unclear to me what the basis of this suggestion could be. The City does not have a workers' compensation carrier – it operates a self-insured plan. The increased costs described are a factor of increase usage by employees who have been injured and benefits paid to them.

over the last year, largely through negotiated solutions with other units. Similar strides must be made with Local #1.